**Guidance on Criminal Record Checks, Declarations and Good Character Policy**

Customs & Immigration Service

# CONTENTS

|  |  |  |
| --- | --- | --- |
|  |  | **1) General principles** |
|  | **2) Declarations – ‘Good Character’ Requirements** |
|  | **3) Criminal Record Check (CRC)** |
|  | **4) General CRC points to note****5) Evaluation of CRC****6) Rehabilitation and Clear Periods****5****5** |
| **1)** | **General principles** |
| 1.1 |  | The Falkland Islands Government Customs & Immigration Service is responsible for considering applications for admission from persons wishing to visit, work or reside in the Falkland Islands. The Service is also responsible for evaluating applications for Permanent Residence Permits (PRP) and Falkland Islands status. |
| 1.2 |  | Concerning criminal convictions - section 628 of the Criminal Procedure and Evidence (Miscellaneous Amendment) Ordinance 2019 (CPEO) provides that any person who has become rehabilitated is to be treated as if they were never convicted. This process is often referred to as convictions becoming spent. However, section 633(8) of the CPEO allows applications made under immigration ordinance to be exempted from the rehabilitation provisions of the CPEO and disclosure of spent convictions can be requested by the Customs & Immigration Service in respect of such applications. |
| **2)** | **Declarations – ‘Good Character’ Requirements** |

2.1 The below statement is included in all permit applications (except visitor permit) and the visa application –

I understand that I am required to declare **ALL** criminal offences whether spent or not, cautions and fixed penalty notices, and that failure to do so may lead to the revocation of any permit granted on this application and my deportation from the Falkland Islands

2.2 Following this statement are the applicant ‘good character’ declarations –

* **Have you ever been convicted of *any* criminal offence?**
* **Have you ever received a caution or a fixed penalty notice?**
* **Have you ever been deported, removed, required to leave, had a permit revoked, or refused entry to *any* country?**

 Note: outside of the good character requirements there is also an additional declaration concerning whether the applicant has ever suffered from any contagious diseases.

2.3 Falkland Islands immigration policy currently provides that for entry into the Falkland Islands, all applicants, *except visitors*, must declare all criminal convictions attained after the age of 16 at the point of application, whether or not those convictions are considered to be spent under the laws of the country in question.

2.4 If on an application for a permit an applicant fails to declare a criminal conviction or gives any information which is false or misleading this may lead to the revocation of the applicant’s permit.

2.5 An extension of a permit requires the applicant to declare any convictions which were acquired in the Falkland Islands or anywhere else subsequent to the issue of the initial permit, and to re-confirm that the declaration made in their original application is correct. A change of job requires a new permit application and therefore a new declaration.

2.6 Visitors are not required to make the above declarations unless they are visa nationals – as the visa application form includes the same declarations.

2.7 The declaration of criminal convictions does not necessarily mean that an application will be refused but criminal convictions will be taken into consideration when assessing. Each application for a permit will be considered on its merits.

 **3) Criminal Record Check (CRC)**

3.1 The Position in the United Kingdom

There are different levels of vetting or DBS checks available in the United Kingdom.  The level of DBS check that can be accessed depends upon who is applying for the check and the purpose of the check.

*(a) Basic check*

A basic DBS check is for any purpose, including employment. The certificate issued as a result of the check will contain details of unspent convictions and conditional cautions.

An individual can apply for a basic check, or an employer can apply for a basic check on an individual’s behalf if they have consent.

*(b) Standard check*

A standard DBS check is suitable for certain roles that require “good character” - such as a security guard or volunteer. The certificate will contain details of both spent and unspent convictions, cautions, reprimands and warnings.  An individual cannot apply for a standard check by themselves. There must be a recruiting organisation that requires the applicant to get the check and the recruiting organisation makes the application.  If a person is self-employed then the organisation or person engaging their services can apply for the check.

The standard DBS check level is the level of check required by C&I in order to process a permit application. An individual is able to apply for this level of check by requesting an ACRO check –

[www.acro.police.uk/s/acro-services/police-certificates](http://www.acro.police.uk/s/acro-services/police-certificates)

*(c) Enhanced check*

An enhanced DBS check is suitable for people working with children or adults in certain circumstances such as those in receipt of healthcare or personal care. An enhanced check is also suitable for a small number of other roles such as taxi licence applications or people working in the Gambling Commission. The certificate will contain the same details as a standard certificate and, if the role is eligible, an employer can request that one or both of the DBS barred lists are checked.  The certificate may also contain non-conviction information supplied by relevant police forces, if it is deemed relevant and ought to be contained in the certificate.

An individual cannot apply for an enhanced check by themselves. There must be a recruiting organisation who needs the applicant to get the check and the recruiting organisation makes the application.  If a person is self-employed then the organisation or person engaging their services can apply for the check.

C&I would not expect to see an enhanced DBS check from any employer other than FIG (see section 3.2(b) below) -

3.2 The Position in the Falkland Islands

*(a) Royal Falkland Islands Police check (equivalent of UK basic and standard check)*

The Royal Falkland Islands Police provide a service whereby a person can apply for a certificate that contains details of current convictions and cautions (equivalent of UK basic check) and also a certificate that contains details of all convictions and cautions, whether current or spent (equivalent of UK standard check).  The police do not facilitate overseas checks.

*(b) FIG Access to Enhanced UK Checks*

Various umbrella companies in the UK provide DBS checking services to FIG, these are only intended to be accessed by UK based employers and organisations.  However, FIG Human Resources are able to access an enhanced check from their umbrella company in relation to UK based people applying for Government jobs. The Government does not make applications for checks on behalf of other private sector employers or organisations.

3.3 Other jurisdictions

The UK DBS check is only intended for people living and working in the UK.  If a person has had a period of time in another jurisdiction then information about their history must be sought from that jurisdiction within whatever framework is in use.

Likewise where a person has spent time in a jurisdiction other than the Falkland Islands then that person can be asked to produce a DBS check from any other jurisdiction they have lived in.  This is likely to be a basic check only.  These checks must be carefully examined to ensure they are satisfactory.

3.4 CRC requirements

 Policy on when to ask for a CRC is historically derived from Executive Council papers in 2006, 2007, 2008, and most recently 2019 and 2020. Current CRC policy is derived from ExCo papers 100-19 and 17-20.

 The following requirements refer to the following permits:

* + **Work permit,**
	+ **Accompanying Dependent permit,**
	+ **Dependent permit,**
	+ **Volunteer permit,**
	+ **Carer permit**

 Applicants for permits *under 150 days (five months)* in duration in any twelve month period do not need to supply a CRC. A Senior Officer can still request checks if justified.

 Applicants for permits *150 days (five months) up to two years* require:

* Valid CRC, issued within three months, from their country of residence.

 Applicants for permits *two years and over* in duration require:

* CRC from the applicant’s country of residence (if lived there since turning 16 years old)
* CRC from every country lived in (since turning 16) for twelve months or more in the last five years
* CRC from every country named on the application that the applicant has declared a criminal conviction in connection with - if relevant

3.5 The following requirements concern:

* **Permanent Residence Permit (PRP)**

 Applicants for PRP require:

* CRC from the applicant’s country of residence – Falkland Islands – Royal Falkland Islands Police (RFIP)
* CRC from every country lived in (since turning 16) for twelve months or more in the last five years
* CRC from every country named on the application that the applicant has declared a criminal conviction in connection with - if relevant

3.6 The following requirements concern:

* **Falkland Islands status (FIS)**

 Applicants for FIS require:

* CRC from the applicant’s country of residence – Falkland Islands – Royal Falkland Islands Police (RFIP)

# General CRC points to note

* 1. Falkland Island Police certificates and UK ACRO checks should be *no more than three months old* on the date of permit application. All other CRC should ideally have been issued since the last occasion on which the applicant lived in the relevant country, or not more than three months prior to leaving the country. This requirement is to be examined on a case by case basis, if CRC received do not meet these precise criteria it does not automatically void the checks.

# ALL CRCs must include *cautions and warnings* as per the UK CRC standards as set out by the ACRO Criminal Records Office – this is a level equivalent to Standard DBS checks. Applicants must be informed of this when applying for CRCs. Checks which do not follow this ACRO – Standard DBS model are not acceptable.

[www.acro.police.uk/s/acro-services/police-certificates](http://www.acro.police.uk/s/acro-services/police-certificates)

* 1. On receipt of the CRC if there is any doubt as to the document’s veracity due diligence is required and best efforts should be undertaken to confirm it is a genuine document. An email containing the CRC received should be sent to the originating authority asking for confirmation of the check and the individual. The below link is a useful resource if further contact details are required:

[www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants](http://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants)

* 1. In regards to CRC from authorities outside the Falklands if checks have already been provided previously *in the correct manner* with a previous permit application it is not necessary to request them again. The correct manner includes correct type and number of checks, and date of checks.
	2. When receiving CRC the C&I Database must be updated to record the fact that valid checks have been received and the date received.
	3. Outside of the Immigration Policy, for some work permit applications, an Enhanced Disclosure CRC will be required for those posts which involve contact with children or vulnerable adults, for example teachers, care workers, and certain health specialists. It is for the HR departments of the recruiting companies in question to manage this requirement.
	4. For applications for ‘Self-Employed Permits’ which meet the Enhanced Disclosure requirements (working with vulnerable people/children) further consultation with other Governmental departments may be appropriate, for example the Education Department or the Health Department, dependent on the nature of the self-employment and who it impacts upon.

# No permit will be issued where a CRC is required if that CRC has not been received (subject to the discretionary powers).

Evidence that the CRC has been applied for by the applicant *does not* allow the permit to be issued.

# Evaluation of CRC

* 1. The following factors will be taken into account when evaluating a criminal record:
		1. The nature of the offence(s);
		2. The seriousness of the offence(s);
		3. The age of the applicant when the offence(s) was/were committed;
		4. The number of offences;
		5. The length of time since the offence(s) were committed;
		6. The sentence(s) or punishment(s) imposed for the offence(s);
		7. Whether there is a pattern of offending behaviour which is recurrent;
		8. The type of permit applied for, including with regard to a work permit the requirements of the post; and
		9. The employment history of the applicant and any references from employers or other organisations
	2. If the Immigration Officer is in any doubt about the nature of any convictions

 and how they may affect an application for a permit then the matter will be

 referred to the PIO who will, if necessary, seek advice from Government

 Legal Services.

# Rehabilitation and Clear Periods

6.1 TABLE OF REHABILITATION AND CLEAR PERIODS

Made up of Schedule 10 - Criminal Procedure and Evidence Ordinance 2014 (commenced 21/04/17) - plus additional policy requirements approved by Executive Council for clear periods for sexual offences, cautions, court orders, and Fixed Penalty Notices (FPN).

Clear periods run from the date of conviction, caution or fixed penalty notice, or in the case of a court order (i.e. driving disqualification) until the order ceases to have effect.

No permit application will normally be approved before the completion of the relevant rehabilitation period or clear period.